

## **Repurposing of Earmarks FY 2016**

The Consolidated Appropriations Act, 2016 allows States and territories to repurpose certain funds originally earmarked for specific projects more than 10 years ago. This memorandum provides the guidance for this provision.

### **Background**

Section 125 of the Department of Transportation Appropriations Act, 2016 (Pub. L. No. 114-113, Division L, Title I, hereinafter “Repurposing Provision”) provides the authority for a State or territory (hereinafter “States”) to repurpose any earmark that was designated on or before September 30, 2005, and is less than 10 percent obligated or final vouchered and closed. The repurposed funds may be obligated on a new or existing project in the State within 50 miles of the earmark designation. The project must be an eligible project under the Surface Transportation Block Grant Program (STBG) (23 U.S.C. 133(b)), or the Territorial and Puerto Rico Highway Program (THP) (23 U.S.C. 165). The Repurposing Provision is available to be applied in FY 2016.

### **Earmark Eligibility for Repurposing**

For an earmark to be eligible for repurposing, it must meet **all** of the following conditions:

- *Meets the definition of an earmark.*
- *Earmark Authorized or designated on or before September 30, 2005.*
- *Earmark Administered by FHWA.*
- *Less than 10 percent obligated or the project has been completed and closed.* The earmark must have less than 10 percent obligated, of the funds made available, as of December 18, 2015. Funds may not be deobligated after that date to meet this threshold.

If a State has obligated 10 percent or more of the funds originally made available for an earmark, all projects that used the earmarked funds must have final voucher of payments processed and closed in the Fiscal Management Information System (FMIS) for the remaining unobligated earmark funds to be eligible for repurposing.

INDOT has a compiled list of all earmarks and is currently reviewing the status of each individual earmark. INDOT is working with Indiana’s FHWA division office to ensure all earmarks and allocated funds listed or otherwise identified meet the repurposing eligibility criteria and the amount of funds available. It should be noted that INDOT and FHWA is looking at obligation authority and not contract authority.

### **Requirements for Obligating Repurposed Funding**

The following criteria must be met to obligate funding that has been repurposed from an earmark to one or more new or existing projects:

- ***Type of Project.*** The repurposed funding must be obligated to another eligible project.
- ***Location of Project.*** The project(s) receiving the repurposed funding must be within the State that received the original earmark and within 50 miles of the original earmark description. If the earmark was for a geographic area (e.g., city, county, corridor), a project will be considered to meet this location requirement if it is within 50 miles of the area's boundary.
- ***Period of Availability.*** The repurposed earmark funds must be obligated on or before September 30, 2019.
- ***Federal Share.*** The applicable maximum Federal share for obligating the repurposed earmark funds is the same as originally provided for the earmark funds.

### **Other Requirements**

The State must identify specific projects (i.e., location and scope of work) for the full unobligated balance of the earmark for repurposing. Repurposed funds may be identified for one or more new or existing projects, or any combination thereof, but must be obligated by the end of FY 2019. The State must identify the specific amount for each project when the request to repurpose is made. Once funds are repurposed for a specific project, the funds may not be changed to a different project at a later date. Cost underruns released from one Federal-aid agreement may be obligated for increased costs only on a different project previously identified at the time of repurposing for the same earmark.

Once funds are repurposed under the Repurposing Provision, they may not be again repurposed because the funds no longer meet the requirements for repurposing since they have been moved off of the original congressionally designated earmark.

### **Process for Requesting and Approving Repurposing**

Each FHWA division office will work with INDOT to ensure the division office has adequate time to review, approve, and submit all modified transfer forms prior to the submission deadlines:

- INDOT intends to obligate the repurposed funds before the end of the fiscal year; the FHWA division office must submit the completed request for repurposing to the OCFO by August 29, 2016.
- FHWA will not consider repurposed funding requests that are not in conformance with this guidance or not received by the submission deadline.
- INDOT will provide a letter to the FHWA division office confirming the list of projects and certifying that the earmarks were eligible for repurposing and the projects identified are within 50 miles of the earmark location within the State and will be obligated for eligible purposes as required in the Repurposing Provision. The State will attach the list of projects to the letter. The FHWA division office will provide the State's certification to the "Repurposed Earmarks" mailbox by July 31 and October 31, 2016.

### **OBLIGATIONS**

The State will obligate the funds in FMIS for the eligible projects as identified on the modified transfer form. The State has until the end of FY 2019 to establish project agreements and make the obligations.